

1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Medicaid Services

3 Division of Policy and Operations

4 (New Administrative Regulation)

5 907 KAR 8:045. Reimbursement of occupational therapy, physical therapy, and
6 speech-language pathology provided by various entities

7 RELATES TO: KRS 205.520

8 STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R.
9 440.130, 42 U.S.C. 1396a(a)(30)

10 NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family
11 Services, Department for Medicaid Services, has a responsibility to administer the Med-
12 icaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to
13 comply with any requirement that may be imposed or opportunity presented by federal
14 law to qualify for federal Medicaid funds. This administrative regulation establishes the
15 Medicaid Program coverage provisions and requirements regarding occupational thera-
16 py services, physical therapy services, and speech-language pathology services pro-
17 vided to Medicaid recipients who are not enrolled with a managed care organization and
18 by adult day health care programs, rehabilitation agencies, special health clinics, mobile
19 health service, multi-therapy agencies, and comprehensive outpatient rehabilitation fa-
20 cilities.

1 Section 1. Provider Participation. To be eligible to provide and be reimbursed for ser-
2 vices covered under this administrative regulation, a provider shall meet the require-
3 ments established in 907 KAR 8:040.

4 Section 2. Reimbursement. (1) To be reimbursable under this administrative regula-
5 tion, a service shall meet the coverage requirements established in 907 KAR 8:040.

6 (2) The department shall reimburse:

7 (a) 63.75 percent of the rate listed on the current Kentucky-specific Medicare Physi-
8 cian Fee Schedule for a service provided by:

9 1. An occupational therapist;

10 2. A physical therapist; or

11 3. A speech-language pathologist; or

12 (b) Thirty-seven and a half (37.5) percent of the rate listed on the current Kentucky-
13 specific Medicare Physician Fee Schedule for a service provided by:

14 1. An occupational therapy assistant;

15 2. A physical therapist assistant; or

16 3. A speech-language pathology clinical fellow.

17 (3)(a) The current Kentucky-specific Medicare Physician Fee Schedule shall be the
18 Kentucky-specific Medicare Physician Fee Schedule used by the Centers for Medicare
19 and Medicaid Services on the date that the service is provided.

20 (b) For example, if an occupational therapy service is provided on a date when the
21 Centers for Medicare and Medicaid Services':

22 1. Interim Kentucky-specific Medicare Physician Fee Schedule for a given year is in
23 effect, the reimbursement for the service shall be the amount established on the interim

1 Kentucky-specific Medicare Physician Fee Schedule for the year; or

2 2. Final Kentucky-specific Medicare Physician Fee Schedule for a given year is in ef-
3 fect, the reimbursement for the service shall be the amount established on the final Ken-
4 tucky-specific Medicare Physician Fee Schedule for the year.

5 Section 3. Not Applicable to Managed Care Organizations. A managed care organi-
6 zation shall not be required to reimburse in accordance with this administrative regula-
7 tion for a service covered pursuant to:

8 (1) 907 KAR 8:040; and

9 (2) This administrative regulation.

10 Section 4. Federal Approval and Federal Financial Participation. The department's
11 coverage of services pursuant to this administrative regulation shall be contingent upon:

12 (1) Receipt of federal financial participation for the coverage; and

13 (2) Centers for Medicare and Medicaid Services' approval for the coverage.

14 Section 5. Appeals. A provider may appeal an action by the department as estab-
15 lished in accordance with 907 KAR 1:671.

907 KAR 8:045

REVIEWED:

Date

Lisa Lee, Commissioner
Department for Medicaid Services

APPROVED:

Date

Audrey Tayse Haynes, Secretary
Cabinet for Health and Family Services

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall, if requested, be held on January 21, 2016 at 9:00 a.m. in Suite A of the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky, 40621. Individuals interested in attending this hearing shall notify this agency in writing January 13, 2016, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business February 1, 2016. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, tricia.orme@ky.gov, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, KY 40601, (502) 564-7905, Fax: (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation Number: 907 KAR 8:045
Cabinet for Health and Family Services
Department for Medicaid Services
Agency Contact Person: Stuart Owen (502) 564-4321

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation establishes the reimbursement provisions regarding occupational therapy, physical therapy, and speech-language pathology services provided by adult day health care programs, multi-therapy agencies (any combination of physical therapists, occupational therapists, speech-language pathologists), comprehensive outpatient rehabilitation facilities (CORFs), rehabilitation agencies, special health clinics, and mobile health service providers to Medicaid recipients who are not enrolled in a managed care organization. DMS will reimburse 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for services provided by an occupational therapist, a physical therapist, or a speech-language pathologist. DMS will pay 37.5 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for services provided by an occupational therapy assistant, a physical therapist assistant, or a speech-language pathology clinical fellow.
 - (b) The necessity of this administrative regulation: This administrative regulation is necessary to expand the physical therapy, occupational therapy, and speech-language pathology service provider base to ensure Medicaid recipient access to the associated services.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by enhancing Medicaid recipient access to care as federally mandated.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by enhancing Medicaid recipient access to care as federally mandated.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
 - (a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.
 - (b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.
 - (c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.
 - (d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

- (3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Adult day health care (ADHC) programs, occupational therapists, physical therapists, speech-language pathologists, multi-therapy agencies (combination of occupational therapists, physical therapists, and speech-language pathologists), comprehensive outpatient rehabilitation facilities (CORFs), rehabilitation agencies, mobile health service providers, special health clinics, and recipients of the services will be affected by the administrative regulation.
- (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
 - (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Any entity that wishes to provide the services will need to enroll in the Medicaid Program as a provider and most likely join the provider network of managed care organizations as most recipients of the services will be enrolled with a managed care organization.
 - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed; however, entities may experience administrative costs associated with enrolling in the Medicaid Program.
 - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Entities will benefit by being eligible to receive Medicaid reimbursement for providing the services. Medicaid recipients will benefit from having an expanded array of providers from which to receive the services.
- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
 - (a) Initially: The cost is indeterminable as the Department for Medicaid Services is unable to predict how many organizations authorized by this administrative regulation to enroll in the Medicaid program and provide occupational therapy, physical therapy, or speech-language pathology services will elect to do so. DMS is also unable to forecast how many Medicaid recipients will elect to receive these services from the aforementioned providers rather than from the existing pool of providers of these services.
 - (b) On a continuing basis: The answer in paragraph (a) above also applies here.
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and state matching funds comprised of general fund and restricted fund appropriations.
- (7) Provide an assessment of whether an increase in fees or funding will be

necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding are necessary.

- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor directly nor indirectly increases any fees.
- (9) Tiering: Is tiering applied? (Explain why tiering was or was not used) Tiering is applied in that the rates are tiered based upon whether the rendering practitioner is an occupational therapist, physical therapist, or speech-language pathologist or an assistant. DMS will pay a lower rate for services rendered by assistants.

FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation Number: 907 KAR 8:045
Agency Contact Person: Stuart Owen (502) 564-4321

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(30).
2. State compliance standards. KRS 194A.030(2) states, "The Department for Medicaid Services shall serve as the single state agency in the Commonwealth to administer Title XIX of the Federal Social Security Act."
3. Minimum or uniform standards contained in the federal mandate. There is a federal mandate to ensure recipient access to services covered by the state's Medicaid program. As the Department for Medicaid Services (DMS) covers occupational therapy, physical therapy, and speech-language pathology services it must ensure that an adequate provider base exists to ensure recipient access to care. A relevant federal law – 42 U.S.C. 1396a(a)(30) requires a state's Medicaid program to "provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area."
- Expanding the base of authorized providers comports with the intent of the aforementioned federal law.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter requirements are not imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Administrative Regulation Number: 907 KAR 8:045

Agency Contact Person: Stuart Owen (502) 564-4321

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by this administrative regulation.
2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 U.S.C. 1396a(a)(30) and KRS 194A.030(2).
3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
 - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.
 - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.
 - (c) How much will it cost to administer this program for the first year? The cost is indeterminable as the Department for Medicaid Services is unable to predict how many organizations authorized by this administrative regulation to enroll in the Medicaid program and provide occupational therapy, physical therapy, or speech-language pathology services will elect to do so. DMS is also unable to forecast how many Medicaid recipients will elect to receive these services from the aforementioned providers rather than from the existing pool of providers of these services.
 - (d) How much will it cost to administer this program for subsequent years? The response in paragraph (c) above also applies here.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: